**Sri. Ambat Eachara Menon:** Sir, I find that vast changes are made in Section 3 of this Bill. Section 3 (1) prescribes the minimum and maximum rates as 10 per cent and 25 per cent respectively. In the Madras State the rates are higher than these and the Government had therefore ordered in L.A. 2-25237/23 dated 28th October 1948 to amend the Act VIII of 1114 raising the rates to 20 per cent for five anna tickets, 25 per cent for 1—8—0 and 33 1/3 per cent for tickets above Rs. 1—8—0. I expected to find an implementation of this principle in this Bill. Even though it is found in Section 3 (1) that a tax at a rate not less than 10 per cent and not greater than 25 per cent shall be levied on "all" payments, before writing out Sub-section 2, an abberation seems to have occurred in the brain of the compiler and he has in copying down the old rule left out of consideration payments below three annas, although there is in the present Act (VIII of 1114 as amended by VII of 1120) a minimum of three pies for all payments of 2 annas and less. By this, they are depriving many local authorities of substantial revenue. The Government would do well to ask Municipalities like Chittur to shut up their shops and go. Even in Trichur, the rate of entertainment tax is one anna for tickets of four annas and less. Now it will be reduced to six pies. It is only from the lowest classes, a major portion of revenue is realised. In the case of Municipalities with slender resources the income from this alone keeps them from financial collapse. I therefore request that the Select Committee will go into the question of modifying the present rates and provide rates in consonance with those prevailing in Cochin.

ശ്രീ എൻ. കുഞ്ഞുരാമൻ: സർ, ഈ ബില്ല് ഒരു സെലക്ട്കമ്മറിക്ക് അയക്കണമെന്നുള്ള ഭേദഗതിയെ ഞാൻ സ്വീകരിക്കുന്നു. താഴെ പറയുന്ന അംഗങ്ങളെ അടങ്ങിയ ഒരു സെലക്ട്കമ്മറിയിലേക്ക് ഈ ബിൽ അയക്കണമെന്നും കമ്മറി സാധാരണഗതിയിൽ ഇതു റിപ്പോർട്ട് ചെയ്യേണ്ടതാണെന്നും ഞാൻ അഭിപ്രായപ്പെടുന്നു.

1. ശ്രീ. പി. എസ്സ്. നടരാജപിള്ള
2. ,, പി. കെ. പോൾ
3. ,, കെ. പി. നീലകണ്ഠപ്പിള്ള
4. ,, പി. കെ. രാമൻ
5. ,, ഇട്ടിര അച്ചുക്കൻ
6. ,, ഫിലിപ്പോസ് മുതലാളി
7. ,, ഡി. ജ്ഞാനശിഖാമണി
8. ,, അമ്പാട്ട് ഈച്ചരമേനോൻ

കമ്മറിയുടെ കോറം നാല് ആയിരിക്കുന്നതാണ്.

ധനകാര്യവും റവന്യൂവും വകുപ്പുമന്ത്രി (ശ്രീ. എ. ജെ. ജോൺ): ഞാൻ പിൻതാങ്ങുന്നു.

*The Motion was put and carried.*

*The Bill was referred to the Select Committee*

## The Travancore Cochin Local Authorities Loans Bill

*Minister for Industries, Excise and Local-Self Government* **[Sri. N. Kunjuraman]:** I beg to introduce The Travancore-Cochin Local Authorities Loans Bill.

*Minister for Finance and Revenue* **[Sri. A. J. John]:** I second it.

**Mr. Speaker:** The Bill is introduced.

ശ്രീ. എൻ. കുഞ്ഞുരാമൻ: 1952-ലെ ഇൻഡ്യൻ ലോക്കൽ അതോറിറ്റീസ് ലോൺ ആക്ടിനെ അനുകരിച്ച് തിരുവിതാംകൂറിലും ഒരു ആക്ട് ഉണ്ടായിരുന്നു എന്നാൽ കൊച്ചി വിഭാഗത്തിൽ അങ്ങിനെ ഒരു ആക്ട് ഉണ്ടായിരു

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ന്നില്ല. മുനിസിപ്പാലിറ്റികളെപ്പോലെയുള്ള തദ്ദേശസ്വയംഭരണസ്ഥാപന ങ്ങൾക്ക് ചില നിശ്ചിതകാര്യങ്ങൾക്കായി, അതായത്, നിയമപ്രകാരം നട ത്തുവാൻ അവരെ അനുവദിച്ചിട്ടുള്ളതായ ചില പ്രവർത്തനങ്ങൾക്കായി കടം എടു ക്കുന്നതിനു വേണ്ട വ്യവസ്ഥകൾ ഉണ്ടാക്കണം എന്നുള്ളതാണ് ഈ ബില്ലിന്റെ ഉദ്ദേശം. ലോക്കൽ അത്താറിറ്റിസ് കടം എടുക്കുന്നതു ഗവണ്മെന്റു് നിശ്ചയി ക്കുന്ന വ്യവസ്ഥകൾക്കു് കീഴ്പ്പെട്ടായിരിക്കണം. അങ്ങിനെ കടമെടുക്കുന്നപ ണം ഏതാവശ്യത്തിലേക്കുവേണ്ടിയാണോ എടുക്കുന്നതു ആ ആവശ്യത്തിനു മാത്ര മേ ചിലവാക്കാവൂ എന്നും ഇതിൽ വ്യവസ്ഥ ചെയ്തിട്ടുണ്ട്. കടം വാങ്ങുന്ന സംഖ്യ നു ൦ കൊല്ലത്തിനകം തവണകളായി കൊടുത്തിരിക്കണമെന്നും ഈ ബില്ലിൽ വ്യവസ്ഥചെയ്തിട്ടുണ്ട്. രണ്ടുരാജ്യങ്ങളിലേക്കും ഒന്നുപോലെയുള്ള ഒരു നിയമം ഉണ്ടാക്കണമെന്നുള്ള ഉദ്ദേശവും ഈ ബില്ലുകൊണ്ടു് സാധിച്ചിട്ടുണ്ട്. കൊച്ചിയിൽ ഇതിനെ സംബന്ധിച്ചു വ്യവസ്ഥകൾ കൊച്ചിൻ മുനിസിപ്പാലി റ്റീസ് ആക്ടിൽ ഉൾപ്പെടുത്തിയിട്ടുണ്ടെങ്കിലും രണ്ടു രാജ്യങ്ങളിലേക്കും ഒരുപോ ലെ ബാധകമായ ഒരു സാമാന്യനിയമം ഉണ്ടായിരിക്കേണ്ടതു ആവശ്യമായതു കൊണ്ടാണു് ഈ ബിൽ ഇപ്പോൾ ഇവിടെ അവതരിപ്പിച്ചിരിക്കുന്നതു്.

**Sri. Eapen Arakkal:** Sir, the provisions in this Bill can be roughly divided into two parts. Firstly, for certain purposes it empowers Local Authorities to borrow money either from Government, or private persons. The purposes are specifically inserted and the manner of repayment is also laid down. The rest of the Bill deals with the way of recovering this loan from the Local Authorities in case they do not pay this debt in the stipulated time. What I would draw the attention of the House to is the provision in Clause 5. The meaning of it was not clearly stated by the Hon'ble Minister when he introduced the Bill. I may just read that clause:

Clause 5 reads as follows:

"(1) If any money borrowed in accordance with the provisions of this Act, or any interest or costs due in respect thereof, is or are not repaid according to the conditions of the loan, the Government, if itself the lender, may, and if the Government is not the lender, shall, on the application of the lender, attach the funds on the security of which the loan was made. After such attachment, no person, except an officer appointed in this behalf by the Government shall in any way deal with the attached funds; but such officer may do all acts in respect thereof which the borrowers might have done if such attachment had not taken place, and may apply the proceeds in satisfaction of the loan and of all interests and costs due in respect thereof and of all expenses caused by the attachment and subsequent proceedings."

I want to speak a few words on this provision. First of all, as has been stated by the Hon ble Minister here the purpose of the bill is to enable the institutions to borrow money for definite and specified purposes. We grant that institutions of this kind may be in need of money for various public purposes such as the prevention of epidemic diseases, etc. That is all very good work. Now, Sir, suppose money is borrowed under this Bill and a specific time is also stated for repayment say within sixty years, the money will have to be returned within that time. The Section says that if within the stipulated time money is not paid or the interest therein is not paid there can be an attachment of the funds of this institution. As the Bill stands now it is not only the default for paying back the money but also the default on the interest that is penalised. It may be that the money borrowed from Government or with the sanction of Government from a private lender is not paid, Government may issue an attachment on the properties of the institution. In the case of a private person he has only to apply to the Government and the Government

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[Sri. Eappen Arakkal]

can forthwith attach the funds of the local authority. The definition of funds includes all moneys at the disposal of the institution and any cess, duty or tax which such authority is legally entitled to impose, and any properties movable or immovable vested in such authority. The entire property will go into the hands of the attaching officer and vest in him. I have to point out that usually money loans recoverable from a debtor have to be necessarily recovered from through and under processes of law. But here is a provision which enables Government to realise money not through a court of law but through an Executive Act of the Government itself. In regard to the soundness of this position I have my very serious misgivings—whether it is a juridical proposition to think that money can be realised through an executive process. That is a proposition which has to be considered in introducing a legislation of this type. When we introduce a law, it must have some legal bearing concerning the promulgation of that law. That itself is a doubtful thing. Apart from that, let us admit for the moment that the Government attach and realise the amount in a case in which Government have lent the money or money has been lent by a private person, because the local authority was not regular in discharging the debt. The next question is the officer as soon as the attachment is effected goes and take possession of the funds. It amounts practically to what may be called in law as "liquidation." It amounts to insolvency proceedings. There is not much difference between insolvency proceedings and this. The provision says that if a creditor files an application, the Government can attach. The consequence of the attachment is that a Government officer can attach it and immediately he becomes a Receiver as per the provisions of section 5. This attaching officer comes and takes possession and then nobody else shall have any custody or control over the funds. That means that the funds are changing hands from the local authority to the officer deputed by the Government. If it is a Municipality it will be the Commissioner, if it is a Panchayat the President of the Panchayat and in the case of Village Union some officer of that Union. The entire custody of the funds vests in the attaching officer. A curious thing in the section is that there is no provision as to what time the control and custody of the money should vest in the local authority. I must think that in framing this provision the framers should have considered this aspect, that if a Receiver comes to take possession of those funds; as soon as the debt is discharged the control of the attaching officer should be terminated. Otherwise as the clause now stands there will be no possibility of the custody coming back in the hands of the local authority. In other words the institution will cease to function as it was functioning before the date of attachment. It may be argued that the officer coming to take possession of the funds will continue to act as the local authority in respect of the attachment. It may be argued that the institution may be allowed to continue. Even then what I say is that the nature of the self-governing institution will be greatly changed. We are here promoting so many self-governing institutions. We are giving democratic principles to these institutions. But if an attaching officer is to take possession of the funds for these little defects or defaults in consequence of the operation of clause 5, what happens is that the entire nature of those institutions undergoes a metamorphosis. It is the attaching officer that handles the funds. Once he takes possession of it, my doubt is whether it will be in a position to continue as the self same institution. Even if it continues, will it be continuing till the date of such attachment is over? I should say that this is a defective provision. Reading the objects and reasons I find that the provision for the attachment was not in existence in the prior Act. Therefore, my submission is that the provisions of clause 5 should either be omitted or there should be a provision that as soon as the debts are discharged by the officer in charge the whole custody of the funds must vest in the hands of the local authorities. With these

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remarks and suggestions that may be taken up by the Select Committee, I support the Bill.

**Sri. D. Gnanasigamoni :** While supporting the principle underlying this Bill I wish to make a few observations.

There is already a Local Authorities Loans Act applicable to the Travancore area in force which is practically word for word the same as in this Bill. There is no corresponding Act in force in the Cochin area. This is meant to be a general law applicable to all local authorities. the purpose being to clarify and limit their powers in the matter of raising loans. With these objectives no one can have any quarrel, but the difficulty will come in the application of certain provisions of this Bill.

For example, clause 5 provides a remedy by attachment by Government if the loan is not paid. It further provides that, after such attachment, no person, except an officer appointed in this behalf by Government, shall in any way deal with the attached funds. This clause is supposed to be applicable to a body like the Panchayat and we have got to see whether this can be made applicable to a Panchayat.

This matter, namely, the recovery of loans and advances made by Government to a Panchayat is governed by section 60 of the Panchayat Act. It reads thus: "Government shall be entitled to recover in the manner provided in sub-section (3) of section 38 of this Act or by suit any loan or advance made to a Panchayat for any purpose to which the funds may be applied under this Act." And section 38 sub-section (3) in turn says that the Director with the sanction of Government can only make a direction for the payment to the person having custody of the funds.

If this clause is intended to be applicable to the Panchayat, how could the two provisions relating to the same matter be reconciled? It is a well known principle of law that when there is a general and a special provision relating to the same matter, it is the special provision that prevails. So this clause, as it is cannot be made applicable to a Panchayat though it is intended to apply. Then there is another great principle involved in clause 5 and that is this. There is an attempt in clause 5 to oust the jurisdiction of the Court, which section 60 of the Panchayat Act has avoided. In the Panchayat Act there is a provision for suit as well. Here the executive action of Government seems to be supreme. It is a matter for serious consideration for the Law Department how far this provision is legal and proper. In a dispute between two parties one ought not to be allowed to take the law into one's own hand. That is a wholesome principle to be followed even in respect of a case when the State is a party. But clause 5 makes the executive action of Government supreme. So suitable provision has to be made modifying the existing provisions and making it more legal and proper. With these observations, I agree that the Bill may be referred to a Select Committee.

ശ്രീ. എൻ. കുഞ്ഞരാമൻ: ഇവിടെ അവതരിപ്പിച്ച ലോക്കൽ അതാറിറ്റീസ് ലോൺസ് ബില്ല് ഒരു സെലക്ട്കമ്മിറ്റിക്കു് അയക്കണമെന്നും ആ കമ്മിറ്റിയിൽ താഴെ പറയുന്ന ബഹുമാനപ്പെട്ട മെമ്പർന്മാർ അംഗങ്ങളായിരിക്കണമെന്നും ഞാൻ അപേക്ഷിക്കുന്നു.

ശ്രീമാൻമാരായ കെ. അയ്യപ്പൻ
ഗബ്രിയൽനാടാർ
എസ്സ്. കുട്ടൻ
ഈപ്പച്ചൻ അറക്കൽ
കെ. ആർ. ഇലങ്കത്ത്
എ. വി. ജോസഫ്
ടി. എസ്സ്. ബാസ്സു

ഇതിന്റെ കോറം ൪ ആയിരിക്കുന്നതാണു്.

*The Motion was put and carried.*

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